

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

CRIMINAL CASE NO. 9 OF 2020

REPUBLIC.....
PROSECUTOR

VERSUS

- 1. JUMANNE MWANGOLO DZUYA**
 - 2. CHIGAMBA BEJA alias SAWA**
 - 3. REGINA MUTHOKI**
- KAVIEACCUSED PERSONS**

JUDGMENT

1. The three accused persons are charged with the offence of **murder contrary to section 203 as read with section 204 of the Penal Code.**

Section 203 provides that:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

2. Section 204 of the Penal Code further provides that:
“Any person convicted of murder shall be sentenced to death.”
3. The particulars of the offence, as laid out in the information and read to the accused, were that **on 7th April 2020 at around 10.30 p.m. at Nzuoni Village, Kipambani Location - Kubo Sublocation, Kubo Location, Matuga Sub-County within Kwale County, they jointly murdered Moses Musyoka Delphine.**
4. The three accused persons pleaded not guilty. The prosecution called a total of **17 witnesses**, namely:
 - i. Christine Nzioki Weusi
 - ii. Stephene Mutuku Isiko
 - iii. Irine Mwaringa Furaha

- iv. John Mutua Bonface
- v. Jonathan Kimeu Kavivia
- vi. No. 89289 PC Ibrahim Mufabi
- vii. Joseph Mbosia
- viii. Nicodemus Muthama Nzuri
- ix. Francisco Joseph
- x. No. 93437 PC Swala Badi
- xi. No. 231684 SP Chitibwa Mwadzombo Saisi
- xii. Justus Kioko Mlinge
- xiii. Samwel Nyoka Juma
- xiv. Mwatela Matano Beja
- xv. No. 58652 Sgt. [Name not recorded]
- xvi. Dr. Juma Salim Mbeti
- xvii. Julius Kemboi Kimei (No. 233811)

ISSUES FOR DETERMINATION

- 5. Under Section 203 of the Penal Code, the prosecution was required to prove:
 - i. The death of the deceased;
 - ii. That the death was unlawfully caused;
 - iii. That the accused committed the unlawful act causing the death;and
 - iv. Under Section 206 of the Penal Code, that the act was done with **malice aforethought**.

Death of the Deceased

- 6. The fact of death is not disputed. Several witnesses, including PW2 and PW8, identified the body of the deceased. PW6 produced photographs marked **PEXT 6A-H**, and the postmortem report was tendered in evidence.

Whether the Death Was Unlawfully Caused

- 7. The deceased, Moses, was alive and well that evening while hosting his friend, **Jonathan (PW5)**, with whom they were chewing miraa. PW1 testified that two intruders burst into the house and one cut her husband on the hand. She ran outside, and one of the attackers followed and assaulted her.
- 8. She sustained severe injuries, including a fracture on the hand. When help arrived and they returned to the house, her husband had succumbed to injuries.
- 9. The postmortem revealed **three deep cuts over the vault of the head exposing brain tissue** (measuring 12 cm x 5 cm, 16 cm x 6 cm, and 14 cm deep), a **cut on the maxilla** exposing bone (6 cm x 2 cm), and **deep cuts on both shoulders** exposing the humeral head. There was also a defensive wound on the left hand.

10. The cause of death was given as **severe head injury with deep cuts to the head.**
11. The injuries were not self-inflicted. From the totality of the evidence, it is clear that the death was unlawfully caused.

Whether the Accused Caused the Death

12. The key question is whether the three accused, or any of them, committed the unlawful acts resulting in the fatal injuries.
13. PW1, **Christine Nzioki Weusi**, the wife of the deceased, testified that she saw and identified both **A1 and A2**, who were local herdsmen. She also picked them out during an identification parade conducted by PW7 (PEXT 14).
14. PW1 recounted that on 7th April 2020, while inside the house, she heard disturbances outside. When her husband peeped through the window, the door was suddenly forced open.
15. She described one intruder as **black, short, heavily built and stout**, armed with a panga, who cut her husband on the hand. The second intruder was **slender**.
16. She was hit with a heavy object on the back and fell. When she tried to run, the second intruder pursued her, hitting her on the head and fracturing her right hand with what appeared to be a butcher's axe. Her P3 form (PEXT 1) confirms the extent of her injuries.
17. She later participated in identifying the attackers and the body of her deceased husband.
18. PW1 testified that she knew both attackers as local herdsmen. She further stated that **A3**, her stepmother, had a longstanding dispute with her over their late father's property. A3 had previously stated that PW1 and her siblings would not inherit their father's plot.
19. PW1 identified **PEXT 2 (panga)** and **PEXT 3 (axe)** as the murder weapons. She stated that **A1** cut her husband with the panga while **A2** struck her with the axe, causing her injuries.
20. PW2 and PW4 were among those who pursued the invaders and managed to apprehend A2.
21. PW13, **Samwel Nyoka Juma**, testified that A2 took motorbike **KMEK 814H (PEXT 4)**, owned by **PW14, Mwatela Matano Beja**, his uncle, on 7th April 2020. He never returned it.
22. The motorbike was later recovered by motorcyclists, including PW2 and PW7. On it were the **panga (PEXT 2)** and **axe (PEXT 3)**, both identified by PW1 as the murder weapons.
23. These were sent for forensic analysis. The **Government Analyst's report (PEXT 5)** confirmed that the weapons bore **male DNA matching the deceased, Moses**.
24. Clothes worn by A2—a blue jeans and a black striped vest—also tested positive for the deceased's DNA.

25. In addition to forensic and eyewitness evidence, **confession statements** by A1 and A3 were admitted after trial within trial proceedings. A1 implicated both A2 and A3, while A3 implicated A2.

Whether There Was Malice Aforethought

26. The issue of identification is intertwined with that of malice aforethought.
27. The evidence shows that **A3**, the stepmother to PW1, harbored a grudge over family property following the death of PW1's father. After relocating to Shimba Hills, she remarried, and A2 became her brother-in-law.
28. According to A3's own confession, **A2 suggested teaching PW1's husband a lesson** because the couple was allegedly benefiting from property she claimed as hers. She provided **Kshs. 1,000** to fuel the motorbike, while **A1** was recruited by A2.

DETERMINATION

29. From the evidence, this Court is satisfied that there is **overwhelming evidence against A2**, particularly the **forensic evidence** linking him to the deceased's blood and the testimonies of PW13 and PW14.
30. As against **A1**, there is his **confession**, corroborated by **PW1's identification** and the **P3 form (PEXT 1)** showing the injuries he inflicted.
31. As regards **A3**, although she was not physically at the scene, she was the **planner and financier** of the crime. Her confession attempted to downplay her role, claiming she only intended that the deceased be "taught a lesson." However, financing and facilitating the mission suffices to establish malice aforethought—an intention to cause grievous harm.
32. Each of the accused was placed on their defence. Their statements were mere denials, mostly addressing arrest dates. A1 alleged that PW1 had seen him before the identification parade, but he did not object during the parade itself. Moreover, the identification was corroborated by other independent evidence.
33. A1's own confession placed him at the scene, admitting that he cut PW1 with the axe, which was later found with the deceased's DNA.
34. The Court is therefore satisfied that the three accused persons acted with **common intention**, as defined under **Section. 21 of the Penal Code** and as interpreted in this Court in the case of **DICKSON MWANGI MUNENE & ANOTHER V R, CR. NO. 314 OF 2011 [2014] eKLR** deduces common intention:

"... where there are two or more parties that intend to pursue or to further an unlawful object or a lawful object by unlawful means and so act or express themselves as to reveal such intention.

It implies a pre-arranged plan. Although common intention can develop in the course of the commission of an offence ... ”

35. In the above case, for common intention to be proved, it was stated that one must show: *criminal intention to commit the offence jointly with others; the act by one or more of the perpetrators in respect of which it is sought to hold an accused guilty, even though it is outside the common design, was a natural and foreseeable consequence of effecting that common purpose; and that the parties were aware of this when he or she agreed to participate in the criminal act.*

36. In ***R V TABULAYENKA s/o KIRYA, [1943] EACA 51*** cited in ***Dickson Mwangi Munene & another v R, (supra)*** it was held that:

“The common intention may be inferred from their presence, their actions and the omission of either of them to disassociate himself from the assault.”

CONVICTION

37. Consequently, the Court finds that the **prosecution has proved the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code** against all three accused persons **beyond reasonable doubt.**

They are hereby convicted accordingly.

DATED, SIGNED AND DELIVERED in open court / online via Microsoft Teams

this **2nd** day of **October** 2025.

**HON. LADY JUSTICE W. K. MICHENI
JUDGE**

In the presence of:

The 3 accused persons

MR, Nabil the advocate for A1 and A2

MR Magolo the advocate for A3

MR.Sirima for the state

Ms Bebora court assistant

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**HON. LADY JUSTICE W. K. MICHENI
JUDGE**
